

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|----------------------------|---|----------------------------|
| M.W., |) | |
| |) | |
| Plaintiff, |) | Case No. 4:10-CV-00914-CDP |
| v. |) | |
| |) | |
| CITY OF WENTZVILLE, et al. |) | |
| |) | |
| Defendants. |) | |

ANSWER TO AMENDED COMPLAINT

Defendants City of Wentzville and Calvin Nevels state the following for their answer to plaintiff s amended complaint:

JURISDICTION AND VENUE

1. Defendants admit the allegations contained in paragraph 1, except that defendants deny that plaintiff has alleged facts establishing that her cause of action in Count I arises under the Fifth Amendment to the United States Constitution.

2. Defendants admit the allegations contained in paragraph 2.

3. Defendants admit the allegations contained in paragraph 3.

PARTIES

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.

5. Defendants admit that the City of Wentzville is a political subdivision of the State of Missouri located in St. Charles County, Missouri and that the City acts through its agents and employees acting within the scope and course of their employment under color of law. Defendants deny the remaining allegations contained in paragraph 5.

6. Defendants admit the allegations contained in paragraph 6.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

FACTS COMMON TO ALL COUNTS

8. Regarding the allegations contained in paragraph 8, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 8 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report.

9. Regarding the allegations contained in paragraph 9, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 9 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report. In addition, defendants specifically deny that defendant Nevels observed the handwritten messages as described in paragraph 9 of the complaint.

10. Regarding the allegations contained in paragraph 10, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 10 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report.

11. Regarding the allegations contained in paragraph 11, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and

correct. Defendants deny the allegations contained in paragraph 11 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report.

12. Regarding the allegations contained in paragraph 12, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 12 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report.

13. Regarding the allegations contained in paragraph 13, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 13 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing reports. In addition, defendants specifically deny that defendant Nevels returned to the Wentzville Police Station.

14. Regarding the allegations contained in paragraph 14, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 14 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report.

15. Regarding the allegations contained in paragraph 15, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 15 to the extent that those

allegations are inconsistent with the narrative and information contained in the foregoing report.

16. Regarding the allegations contained in paragraph 16, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 16 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report.

17. Regarding the allegations contained in paragraph 17, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 17 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report. In addition, defendants state that the best evidence concerning what was said during the phone call that defendant Nevels received from plaintiff is contained in a recording of that telephone call.

18. Regarding the allegations contained in paragraph 18, defendants state that the narrative and information contained in Wentzville Police Department Offense/Incident Report dated 01/15/2009 on Complaint No. 0900000176 prepared by Officer Calvin Nevels are true and correct. Defendants deny the allegations contained in paragraph 18 to the extent that those allegations are inconsistent with the narrative and information contained in the foregoing report. In addition, defendants state that the best evidence concerning what was said during the phone call that defendant Nevels received from plaintiff is contained in a recording of that telephone call.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23.

24. With regard to the allegations contained in paragraph 23, defendants state that the narrative and information contained in Officer Nevels' Offense/Incident Report and Wentzville Police Department Supplemental Narrative Reports on Complaint No. 0900000176 are true and correct. Defendants deny the allegations contained in paragraph 24 to the extent that they are inconsistent with the narrative and information contained in the foregoing reports.

25. With regard to the allegations contained in paragraph 25, defendants state that the narrative and information contained in Officer Nevels' Offense/Incident Report and Wentzville Police Department Supplemental Narrative Reports on Complaint No. 0900000176 are true and correct. Defendants deny the allegations contained in paragraph 25 to the extent that they are inconsistent with the narrative and information contained in the foregoing reports.

COUNT I

26. In paragraph 26, plaintiff incorporates by reference paragraphs 1 through 25. Defendants reallege and incorporate by reference their answers to the foregoing paragraphs.

27. Defendants deny the allegations contained in paragraph 27.

28. Defendants deny the allegations contained in paragraph 28 and further state that under the circumstances presented to defendant Nevels there was no reasonable basis for him to secure the residence and treat the residence as a crime scene.

29. Defendants deny the allegations contained in paragraph 29.

30. Defendants deny the allegations contained in paragraph 30.

31. Defendants deny the allegations contained in paragraph 31.

DEFENSES

1. Count I of plaintiff's amended complaint fails to state a claim upon which relief can be granted against defendants City of Wentzville and Calvin Nevels.

2. Plaintiff's claim against defendants for damages is barred by reason of the fact that plaintiff voluntarily assumed the risk of finding and viewing her sister's body and experiencing plaintiff's alleged horror, shock, mental and emotional distress, and allegedly incurring hospitalization and medical treatment and costs thereof.

3. Plaintiff has failed to mitigate whatever damages, if any, plaintiff may have incurred by reason of the matters alleged in the amended complaint.

WHEREFORE, having fully answered Count I of plaintiff's amended complaint, defendants City of Wentzville and Calvin Nevels pray this Court enter its order dismissing Count I of the amended complaint with prejudice, awarding defendants their costs and reasonable attorney fees pursuant to 42 U.S.C. §1988(b), and granting defendants such further relief as this Court deems proper.

COUNT II

Defendants make no response to Count II of the amended complaint in that the claim and allegations in Count II are directed at co-defendant K.B.

Respectfully submitted,

KING, KREHBIEL, HELLMICH,
HACKING & BORBONUS, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2010 a copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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/s/ Robert J. Krehbiel